

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee  
Hon. Elihu M. Berle, Chair  
Case Management Subcommittee, Hon. Robert B. Freedman, Chair  
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DATE: October 6, 2006

SUBJECT: Required Use of the Latest Version of a Judicial Council Form  
(adopt Cal. Rules of Court, rule 1.37 and amend rule 1.42) (Action  
Required)<sup>1</sup>

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Issue Statement

Currently, no rule in the California Rules of Court expressly requires a person to use the most recent version of a Judicial Council form. To clarify a person's duty to use the latest version, a new provision requiring the use of the current form should be added to the rules. However, because a person may inadvertently use an older version that may still be legally effective, the rules should also be amended to provide that a court clerk may not reject a Judicial Council form for filing merely because it is not the latest version of the form.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2007:

1. Adopt rule 1.37 of the California Rules of Court to provide that the current version of a Judicial Council form must be used; and

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<sup>1</sup> At the June 30, 2006, meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, rule 201.1, an amended version of which was circulated for comment, has been divided into rules 1.30 through 1.45. Hence, instead of recommending amendments to rule 201.1, this report recommends that rule 1.37 be added to the reorganized rules and that rule 1.42 of the reorganized rules be amended.

2. Amend rule 1.42 to provide that the clerk must not reject an earlier version for filing.

The text of new rule 1.37 and amended rule 1.42 is attached at page 4.

#### Rationale for Recommendation

Currently no rule expressly provides that a person who is using a Judicial Council form must use the current version. It is desirable that litigants be required to use the most recent version. This will ensure that the forms filed are legally effective, reduce uncertainty, and lower the number of forms needing to be refiled. To clarify this issue, a new rule should be added in title 1. Rule 1.37 would provide that “[a] person serving and filing a Judicial Council form must use the current version of the form adopted or approved by the council.”

However, parties, particularly self-represented litigants, sometimes inadvertently use an earlier version of a Judicial Council form. Although the use of such a form is undesirable, the form may be legally sufficient. There are a variety of reasons that forms are revised, including reformatting, style changes, and corrections to cross-references.

If a person uses an out-of-date form, a judicial officer needs to determine if the form is legally sufficient. Because legal sufficiency of a form is a judicial rather than a clerical function, it should not be delegated to a clerk to determine whether a Judicial Council form should be filed. For this reason, an additional amendment should be made to rule 1.42. Specifically, the subdivision with the list of the reasons that a clerk must not reject a Judicial Council form for filing should be amended to add the following reason: “The form is not the latest version of the form adopted or approved by the Judicial Council.” (See rule 1.42(9).)

#### Alternative Actions Considered

The rules on Judicial Council forms could remain silent on the issues of whether current forms must be used and whether older forms may be filed. However, given that these questions repeatedly arise, the clarification of which forms must be filed and accepted by the court clerk would be beneficial.

#### Comments From Interested Parties

This proposal was circulated in spring 2006. Seventeen comments were received on the proposal. The commentators included court administrators, the State Bar’s Committee on the Administration of Justice, California Defense Counsel, and the Association of Defense Counsel of Northern California and Nevada. A chart summarizing the comments and the committee’s responses is attached at pages 5–12.

The committee considered the suggestion by some of the commentators to provide parties with a “grace period” for using an outdated form instead of adding rule 1.42(9). But it concluded that providing a grace period would not resolve the question of how to handle an outdated form that is used after the end of the grace period. The proposed amended rule does this by expressly requiring the court not to reject such forms for filing.

Another issue considered was the consequence of not using a current form. The rule itself does not spell this out. However, the consequence of permitting an outdated form to be filed is that it will be left to the discretion of judicial officers whether to allow the outdated form to be used or to require a new one to be filed. Thus, it will be up to the court to address the situation in which a party uses a form that is not current.

Finally, in reviewing the proposed rule amendments, the committee concluded that in rule 1.37 the proposed words “latest recent version” should be replaced by “current version.”

#### Implementation Requirements and Costs

The only anticipated implementation requirement will be to provide information and training for court clerks regarding the new provisions.

Attachment

Rule 1.37 is added to the California Rules of Court and rule 1.42 is amended, effective January 1, 2007, to read:<sup>2</sup>

**Rule 1.37. Use of forms**

A person serving and filing a Judicial Council form must use the current version of the form adopted or approved by the council, unless a rule in the California Rules of Court allows the use of a different form.

**Rule 1.42. Forms not to be rejected**

A court must not reject for filing a Judicial Council form for any of the following reasons:

- (1) The form lacks the preprinted title and address of the court;
- (2) The form lacks the name of the clerk;
- (3) The preprinted title and address of another court or its clerk's name is legibly modified;
- (4) The form lacks the court's local form number;
- (5) The form lacks any other material added by a court, unless the material is required by the Judicial Council;
- (6) The form is printed by a publisher or another court;
- (7) The form is imprinted with the name or symbol of the publisher, unless the name or symbol replaces or obscures any material on the printed form; ~~or~~
- (8) The form is legibly and obviously modified to correct a code section number or to comply with the law under which the form is filed; ~~or~~ or
- (9) The form is not the latest version of the form adopted or approved by the Judicial Council.

<sup>2</sup> The proposed amendments to rule 1.42 are made to the version of the rule adopted by the Judicial Council at its June 30, 2006, meeting and reflect the text that will be in effect on January 1, 2007. The amendments adopted as part of this proposal will be incorporated into the rules that go into effect on January 1, 2007.

**SPR06-18**

**Requiring Use of the Latest Version of a Judicial Council Form  
(adopt rule 1.37 and amend rule 1.42 [circulated as amendments to rule 201.1])**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Ms. Debra J. Albin-Riley Chair Litigation Section Los Angeles County Bar Association Los Angeles	A	Y	No specific comments.	No response required.
2.	Ms. Sandy Almansa Supervising Legal Clerk II Superior Court of California, County of Stanislaus Modesto	A	N	No specific comments.	No response required.
3.	Hon. Richard E. Best (ret.) San Francisco	AM	N	<p>Is this a rule or a suggestion? Is this a trap for the unwary? Is this a rule with unknown consequences or enforcement?</p> <p>Rule 1.37 (circulated as new rule 201.1(d)) says you must use our form unless an inconsistent rule says you need not do so.</p> <p>Rule 1.42(g) (circulated as an amendment to rule 201.1(g)) says you can't use out-of-date forms; you can use out-of-date forms to get into court, but you cannot rely on them.</p> <p>Nothing warns people that they could be tossed out of court when a judge rules the form is inadequate. The pro per or lawyer says they used the Judicial Council form</p>	Under rule 1.37 (circulated as new rule 201.1(d)), persons are warned that they should use the current form. But if they do not,

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				and the clerk accepted it. The judge gets to explain that litigants cannot rely on the Judicial Council or the court. The irate pro per can then take the matter up with the clerk who has no bailiff. The clerk can explain, "It's not my job."  Perhaps, something like a mandatory nunc pro tunc amendment and/or a waiver of objection to the out-of-date form if not timely raised would be an alternative.	clerks should not make the determination of the legal sufficiency of a form. This question should be left to the discretion of a judicial officer.  The committee disagreed that these means to address the problem are preferable.
4.	Committee on Administration of Justice The State Bar of California San Francisco	A	Y	CAJ supports this proposal.	No response required.
5.	Ms. Janet Garcia Court Manager Planning and Research Unit Superior Court of California, County of Los Angeles Los Angeles	A	N	No comment.	No response required.
6.	Ms. Cheryl Kanatzar Deputy Executive Officer Superior Court of California, County of Ventura Ventura	N	N	We prefer use of the most recent form for consistency.	The rule does require the use of the latest form, but allows others to be filed.
7.	Ms. Heide Keeble Senior Legal Processor	N	N	I believe that this change would not affect processing clerks as much as it would the	The reason for not simply requiring the use of the current

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	Superior Court of California, County of Sonoma Santa Rosa			judges. However, it would cause undue burden on the judge to have to check to be sure all necessary information is present, rather than simply checking to be sure the proper form was filed. The processing clerks check for the newest form to aid the judges in ensuring that all necessary information is present. Allowing parties to file outdated forms will only add more unnecessary paper to case files, as they will certainly be occasions that judges require the current version of a form to be filed after an outdated form was allowed to be filed. Forms are updated for the benefit of all involved and should be required to be used by all filing parties.	form is that parties, including particularly self-represented parties, may inadvertently use an outdated form. If they could not file the form, they might be deprived of an important right. Hence, the proposed rule changes seek to establish a balance between requiring the use of current forms and preserving a person's right to bring an action and seek relief.
8.	Ms. Tressa S. Kentner and Ms. Debra Meyers Executive Officer and Chief of Staff Counsel Services Superior Court of California, County of San Bernardino San Bernardino	A	N	No specific comments.	No response required.
9.	Ms. Kathy Maderos and Ms. Angie Gonzalez Supervisor II and Supervisor I Superior Court of California,	A	N	No specific comments.	No response required.

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	County of Stanislaus Modesto				
10.	Mr. Wayne Maire President California Defense Counsel Sacramento	A	Y	No specific comments.	No response required.
11.	Hon. Laura Masunaga Commissioner Superior Court of California, County of Siskiyou Yreka	A	N	No specific comments.	No response required.
12.	Ms. Julie M. McCoy Orange County Bar Association Irvine	A	N	No specific comments.	No response required.
13.	Ms. Pam Moraida Civil/Small Claims Program Manager Superior Court of California, County of Solano Fairfield	A	N	No specific comments.	No response required.
14.	Ms. Diana Landmann Family Law Court Manager Superior Court of California, County of San Joaquin Stockton	AM	N	In our county, we usually have a grace period of 90 days to let a party use an outdated form. Sometimes the customer purchases a form or kit right before the changes come out. Will we be able to continue the grace period?	The rules do not provide for a grace period. However, if a party uses an outdated form, the court must not reject it. (See rule 1.42(9) [circulated as an amendment to rule 201.1(g)].)
15.	Ms. Tina Rasnow	A	N	Excellent! It will help self-represented	Agreed that the rule amendments



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	Senior Attorney/Coordinator Superior Court of California, County of Ventura Ventura			litigants, and helps to ensure access to justice.	should help self-represented litigants and ensure access.
16.	Mr. Michael M. Roddy Executive Officer Superior Court of California, County of San Diego San Diego	AM	Y	<p>If the proposed change is implemented to avoid conflicts or appearance of prejudice to litigants submitting obsolete forms, another potential problem may occur. Litigants that currently argue they were prejudiced in some way because their obsolete versions of forms were rejected may instead contend that they were not given the opportunity to successfully plead or argue their case because the court wrongfully accepted an obsolete version of a form that did not comply with the current laws.</p> <p>Also, some newly revised forms have items that must be completed in order to determine the filing fee to be charged; for example, the Small Claims 'Claim of Defendant' form. If the obsolete version were to be filed, the clerk would be unable to determine the filing fee and the matter would need to be addressed at the trial assuming the defendant appeared at the trial.</p>	Although there may be some problems that arise from outdated forms being filed, courts should be able to handle these by, for example, requiring a party to file a current version of the form.

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				<p>Further, there are issues related to the logistics of alerting assigned judicial officers of obsolete versions of forms having been submitted and then tracking the forms being sent between the business office and the judicial officer.</p> <p>A more feasible solution may be to enact a grace period for newly revised forms. The San Diego Superior Court currently allows litigants a 30-day grace period to submit obsolete forms and has a practice in place to advise litigants that forms have been updated. This is only a practice for a 30-day grace period so as to avoid unnecessary impacts to operations and litigants pending actions.</p>	
17.	Ms. Iris Stuart Court Operations Manager Superior Court of California, County of Sonoma Santa Rosa	N	N	<p>I agree with rule 1.37 (circulated as new rule 201.1(d)) requiring use of the latest form.</p> <p>I disagree with 1.42(9) (circulated as an amendment to rule 201.1(g)(9)), which prohibits the clerk from rejecting outdated forms.</p> <p>1. Self-represented litigants usually obtain</p>	<p>No response required.</p> <p>The committee disagreed and supports the amendment of rule 1.42.</p> <p>1. The rules would provide</p>

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				<p>their forms from the court, SHAC, FLF, or the Judicial Council Web site so they receive the most current forms. Attorneys are the persons who are most likely to file outdated forms either because their form software is not updated in a timely manner, or they're not using form software and aren't paying attention to form revisions (or rule changes).</p> <p>2. Creating a rule that requires the use of the latest version of a form, then a second rule that prohibits the clerk from rejecting an outdated form basically nullifies the first rule.</p> <p>3. This rule could increase workload for judges who must determine whether the old form is sufficient. And, it may increase delay in those cases which must be continued pending the filing of the latest form.</p> <p>4. This rule hinders the move towards uniformity and makes it more difficult to assess the function and handling of the form</p>	<p>notice of the need to use current forms to attorneys as well as self-represented litigants.</p> <p>2. The committee disagreed. The two rules work together to ensure the use of current forms and protect the rights of litigants.</p> <p>3. Rule 1.42(9) (circulated as an amendment to rule 201.1(g)) may result in some increased workload, but it is hoped that it would be offset by the increase use of current forms pursuant to rule 1.37 (circulated as new rule 201.1(d)).</p> <p>4. The committee disagreed. The rules should result in more uniform handling of new and old</p>

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				<p>during document processing by court staff.</p> <p>A mandated grace period in rule 1.37 (circulated as new rule 201.1(d)) would be more beneficial than the prohibition in rule 1.42(9) (circulated as an amendment to rule 201.1(g)(9)). In this day and age, there's really no good reason for anyone to use outdated forms. A grace period of 90 days would provide sufficient time for software to be updated or for attorneys to otherwise discover their forms are outdated.</p>	<p>forms throughout the state.</p> <p>A grace period would not address the problem of whether the clerk's office should file an outdated form after the grace period.</p>